BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

The opinion of the District Court (R. 31-38) is reported in 36 Fed. Supp. 880. The Circuit Court's opinion (R. 46-69) is reported at 121 F. (2d) 336.

The ground on which the jurisdiction of this Court is invoked, the proceedings and opinions below, and the case history, are stated in the foregoing petition.

Specification of Errors.

Petitioner respectfully submits that the judgment in this case has been reversed against your petitioner erroneously in the following particulars:

1. In refusing to affirm the summary judgment because respondent was not represented by a lawyer or other competent adviser at the time he signed the release.

2. In directing that there should be a trial of the issues at which the burden will be on petitioner to sustain the release "as fairly made with and fully comprehended by the seaman".

3. In failing to sustain the release as a matter of law because there are no issues of fact in regard thereto.

4. In reversing the judgment of the District Court dismissing the complaint.

Argument.

Petitioner contends that in the absence of fraud, duress and overreaching seamen have the same liberty to bind themselves to their employers by a contract as do other

adults and the fact that seamen as a class are "wards of admiralty" is not sufficient reason for a court to refuse to enforce a release where the undisputed facts show it is fairly and intelligently made by a seaman who fully comprehended its terms.

The Circuit Court's ruling that such a seaman under these circumstances should be represented by counsel or other competent adviser at the time he signs the release does violence to the "wards of admiralty" doctrine.

A. Such a Novel Ruling by the Circuit Court Is of Serious Consequence to the Shipping Industry and to Seamen.

The Port of New York within the jurisdiction of the Second Circuit is the principal center of the shipping industry of the country. In its annual report, just published, the Administrative Office of the United States Courts shows that in the year ending June 30th, 1941 "two-thirds of all the cases brought under the Jones Act for relief of injured seamen" and "almost one-third of the admiralty suits" were brought in the Southern District of New York. It is thus of the utmost importance to shipowners and seamen that novel and important decisions of the Second Circuit affecting the shipping industry, such as here presented, be reviewed by this Honorable Court.

The fundamental reason advanced by the Circuit Court in refusing to sustain the release in this case was that seamen are "wards of admiralty" and, therefore, do not have the same liberty to contract as do other adults. The Circuit Court enunciated this rule in saying:

> "The liberty of the individual employee to bind himself firmly—absent fraud, coercion or the like—in a contract with his employer, no matter how harsh

> or unusual its terms, is not to be strictly applied to workers who go to sea. As to such provisions in their contracts, because they are 'wards of admiralty', a distinctive doctrine is applicable: a peculiar burden is cast on the employer" (R. 68).

Neither this nor any other court has ever held that such a rule applies to a seaman who fully comprehends the nature and consequences of his acts. It has been generally accepted that seamen are "wards of admiralty", and, as such, their contracts are to be carefully scrutinized, and if after such careful scrutiny fraud, duress, mistake, overreaching or the like are found then such contracts will be set aside.

In determining whether there is fraud, coercion, mistake, duress or the like, courts have made a careful investigation to determine whether or not the seaman fully understood the contract he was making. If it was found that he did not fully comprehend the contract and that the terms were harsh or unusual, it was set aside. But, if he fully understood the contract, it was upheld even if the terms were harsh or unusual. Meagre consideration standing alone has never been held to constitute a harsh or unusual term.

> *Sitchon* v. *American Export Lines, Inc.*, 113 F. (2d) 830, cert. den. 311 U. S. 705;
> *Harmon* v. *United States*, 59 F. (2d) 372.

The proper application of the "Wards of Admiralty" doctrine to seamen's releases in personal injury cases is to be found in the following cases.

> *Harmon* v. *United States, supra.*

Here libellant sought damages for personal injuries and stated in his libel that he had signed a release which

should be set aside and annulled because of inadequate consideration and because he was mentally and physically incapacitated at the time he signed the release. In affirming a decree dismissing the libel the Circuit Court said, page 373:

> "While the record would easily support a finding that in releasing his claim appellant did not act wisely, it does not at all appear therefrom that he was either mentally or physically incapacitated from fully understanding and appreciating what he deliberately did.
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> * * *
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> "Here is a case of a matter in controversy, negotiations in regard to which, protracted over a considerable space of time in an atmosphre not of overreaching and double dealing, but of frankness and plain dealing, finally resulted in a settlement with nothing really set up to defeat it except the claim which of course may not avail, that one side obtained a better bargain than the other. *Chicago & N. W. Ry.* v. *Wilcox* (C. C. A.), 116 F. 913."

That opinion also shows that the court fully appreciated the early decisions relating to the terms of seamen's employment contracts, yet nevertheless it said:

> "*Harden* v. *Gordon*, Case No. 6047, 11 Fed. Cas. 480; *Brown* v. *Lull*, Case No. 2018, 4 Fed. Cas. 408; *The David Pratt*, Case No. 3597, 7 Fed. Cas. 22; *The Rajah*, Case No. 11538, 20 Fed. Cas. 193; *The Ringleader*, Case No. 11850, 20 Fed. Cas. 818. These cases present in their facts, and in the learned and interesting discussions of them, typical cases of advantage in situation, and firmly establish, as the just consequence of that advantage, the rule that the advantaged one is under a heavy burden to sustain his dealings with the disadvantaged one. Nothing in these decisions, however, nor in the others cited

by appellant, *The Henry S. Grove* (D. C.), 22 F. (2d) 444; *Pfeil* v. *U. S.* (C. C. A.), 34 F. (2d) 923, supports appellant's claim that a release entered into for a valuable consideration, settling a controversy involving matters contentious both as to liability and amount, after negotiations have been long on foot, in the course of which the plaintiff has had the benefit of the advice of counsel vigorously opposed to the settlement, no fraud, deception, or overreaching having been practiced, may be set aside merely because of the fact that plaintiff may have received considerably less for his injuries than at the end of a controversy he might reasonably have hoped to obtain."

In the case at bar, the District Court found that there was no fraud, coercion, mistake, duress or the like, and the Circuit Court did not overrule this finding. Respondent wrote in the release in his own handwriting that he read the release from beginning to end, and also wrote that the paper he was signing was a "release of everything". He did not deny that he understood that he was releasing petitioner from "injuries, illnesses, rights and claims not mentioned herein or not known to me". Thus, the admitted facts are, as found by the District Court and unchallenged by the Circuit Court, that respondent understood what he was doing and there was no fraud, duress, coercion or the like. Petitioner therefore sustained its burden. Under such circumstances the Circuit Court in refusing to sustain the release as a matter of law deviated from the well established "wards of admiralty" doctrine.

The Adonis, 38 F. (2d) 743.

Here a seaman filed a libel for damages based on negligence and for maintenance and cure. A release was offered in defense of the action, the validity of which

was attacked by the libelant because of duress under which he signed it, fraud in that its terms were changed, and mistake in that he thought he was signing a receipt. The Circuit Court sustained the release holding that by signing it "He is therefore presumed to have known and understood its contents". The Court also found that the release was not changed nor was there any duress and said, page 744:

> "But a release of this kind, formally signed, sealed, and witnessed, is, however, prima facie good, and cannot be set aside unless it was obtained by duress, mistake, or, in this case, by fraud, in that the instrument admitted in evidence is not in all respects the instrument the seaman signed. *Thompson* v. *Faussat*, Pet. C. C. 182, Fed. Cas. No. 13954; *The Ship Neptune*, 1 Pet. Adm. 180, Fed. Cas. No. 17569."

None of these cases hold that a seaman should be represented by counsel or other competent adviser when he signs a release.

B. The Circuit Court's Ruling Is Unsupported and Unprecedented.

Even if we assume that the doctrine pronounced by the Circuit Court is correct, this doctrine is not applicable to a release by a seaman of a personal injury claim.

The Circuit Court endeavored to support its ruling by a review of the ancient and historically important admiralty cases. However, it misconstrued the holdings therein. The cases on which the Circuit Court relied were principally *Harden* v. *Gordon*, Case No. 6047, 11 Fed. Cas. 480; *Brown* v. *Lull*, Case No. 2018, 4 Fed. Cas. 408; *The Minerva*, 1 Haggard, 347 (1825), and *The Juliana*, 2 Dodds 504 (1822). The Circuit Court reached the con-

clusion that these cases stood for a general restriction on a seaman's freedom of contract. Properly understood, however, these cases stand only for the proposition that a seaman's contract of employment is governed by the maritime law, and cannot be changed by contractual arrangements between the parties to the seaman's detriment. Seamen's wage agreements were zealously guarded under the Maritime Law because "freight was the mother of wages".

The Circuit Court has set forth in its opinion many quotations from the opinions of the above cited cases. As set forth in the opinion they seem to support the Circuit Court's conclusion. But that is because the Circuit Court has culled them from a context which has a different meaning. It will require an examination of the cases themselves to see that not only the holdings but the language of the opinions in such cases do not support the conclusions of the Circuit Court but instead support the position taken here by your petitioner.

In the case of *Harden* v. *Gordon*, *supra*, Mr. Justice Story was dealing with a contract of employment where the employer had insisted upon a stipulation in the shipping articles that seamen should pay for medical advice and medicines. This was held to be void, but not because there was a general restriction on a seaman's freedom of contract. The reason was that a seaman's contract of employment was governed by the general maritime law, and, as to medical attention and medicines, by an Act of Congress. Therefore, it was not the subject of private contract adverse to an ignorant seaman. As Mr. Justice Story said:

> "Hence every deviation from the terms of the common shipping paper (which stands upon the general doctrines of maritime law) is rigidly inspected;

and if additional burthens or sacrifices are imposed upon the seamen without adequate remuneration, the court feels itself authorized to interfere and moderate or annul the stipulation."

Mr. Justice Story observed a distinction between contracts of employment and other contracts such as those made by a seaman in settling an unliquidated and contentious claim. With regard to such contracts he said, page 487:

> "*Indeed in cases of doubtful or conflicting claims, where a compromise takes place, and receipts are given, as final discharges between the parties, upon deliberate consideration and in good faith, there is the greatest reason to uphold these instruments, for they tend to general repose and security.* But when there has been no such compromise; when there has been an entire mistake of right, or an unobserved comprehensiveness in the language, reaching beyond the matters under settlement, there would be gross injustice in refusing the injured party an equitable relief." (Italics ours.)

Thus in recognizing that the rule is different when considering conflicting, unliquidated claims Mr. Justice Story forcefully pointed out that the greatest reason exists to uphold such compromises to secure finality. Practically all of the cases cited by the Circuit Court recognize this distinction. The reason for this distinction is obvious. A seaman's contract of employment is different from the contracts of employment of other adults, in that a seaman works and lives on the ship constantly, under the dominion of his employer. However, when his term of employment is over and when he is no longer subjected to the hazards of the sea but is on land free to enter into transactions under the same circumstances as other adults, the reason for the rule applicable to his

contract of employment no longer exists. The cases cited by the Circuit Court recognize that a different rule applies to releases of unliquidated claims than applies to agreements which govern a seaman during his hazardous employment. Even as to the latter agreements, they will be enforced where the seaman fully understands them and he is remunerated therefor.

This rule was set forth in the case of *Brown* v. *Lull*, *supra*, which was also cited by the Circuit Court. In that case Mr. Justice Story had for determination the validity of shipping articles which provided that if the vessel should be lost or captured, the seamen's wages should cease. In deciding in favor of the seaman, Mr. Justice Story clearly limited his language to such stipulations in shipping articles, but pointed out that even here if the seaman understood what he was doing and received additional compensation, his contract would be upheld, saying page 409:

> "Whenever, therefore, any stipulation is found in the shipping articles, which derogates from the general rights and privileges of seamen, courts of admiralty hold it void, as founded upon imposition or an undue advantage taken of their necessities and ignorance, and improvidence, unless two things concur: *First, that the nature and operation of the clause is fully and fairly explained to the seamen; and secondly, that an additional compensation is allowed, entirely adequate to the new restrictions and risks imposed upon them thereby.*" (Italics ours.)

So, too, in *The Minerva*, *supra*, and in *The Juliana*, *supra*, Lord Stowell had for consideration suits for wages based on clauses in shipping articles. The decisions in these cases were also based on the proposition that under

the maritime law ignorant seamen could not give up their rights by private agreements with shipowners.

In none of the foregoing cases was there a settlement and compromise of an unliquidated claim for personal injury. Furthermore, they demonstrate that, if, after careful scrutiny, the court finds a seaman fully understands his acts and is remunerated, *even an ignorant seaman's contract of employment will be upheld.*

It is apparent that the Circuit Court was more impressed with the classical language used in these cases than with what these cases actually held.

C. The Circuit Court's Ruling Imposes an Arbitrary Requirement Unreasonably Impairing the Rights of Shipowners and Seamen.

In addition to a misconception and misapplication of the doctrine that seamen are "wards of admiralty", the Circuit Court extended this doctrine unreasonably by imposing a startling and novel obligation when it refused to sustain the release because respondent was not represented by counsel or other competent adviser. The freedom of individuals to contract has always been zealously safeguarded under the Constitution of the United States, and the only inroads upon such rights which have been made under our system of government have been by legislation after careful investigation of all the facts and circumstances necessitating and justifying such legislation. In fact, this has become a requirement of due process. The requirement that seamen be represented by counsel or other competent advisers at the time they sign releases is without legislative sanction and without the presence of any facts indicating the necessity or reasonableness of such a requirement.

This drastic and arbitrary requirement is neither practical nor legally proper. Counsel can only act in such

cases upon the medical opinion furnished and if the medical opinion as to future disability is erroneous, though honest, of what assistance could counsel be? The accuracy of medical advice is a risk both parties assume.

If a seaman has an attorney or competent adviser at the time he signs a release, these are facts to be considered in determining whether or not he fully understood and comprehended the terms of the release. But, if he fully understood and comprehended the terms of his contract, such as the undisputed facts show in the present case, it is immaterial that he was or was not represented by a lawyer or other competent adviser. Petitioner knows of no law, nor did the court cite any cases which hold that the absence of a lawyer or competent adviser *ipso facto* is sufficient reason to refuse to sustain a release. Yet the lack of such an adviser was the sole reason why the Circuit Court refused to follow its previous decision in the similar case of *Sitchon* v. *American Export Lines, supra*:

> "On the record now before us, the instant case lacks the differentiating circumstances we found in *Sitchon* v. *American Lines, supra*, and sufficiently resembles the facts in *Bonici* v. *Standard Oil Co., supra*, so that it should not have been decided against appellant on the facts as presented on the motion for summary judgment. *Here the seaman had no lawyer nor other competent adviser representing him when he signed the release*" (R. 69). (Italics ours.)

Furthermore, the affidavits of respondent and one of his counsel, unquestionably a competent attorney, raised no issue that the release was not fairly made with and fully comprehended by the seaman; neither did they complain because respondent was not represented by a lawyer

or competent adviser. As was said by the District Court, and the Circuit Court found nothing to the contrary:

> "No single circumstance attending the document's execution is disputed" (R. 32).

The imposition of a prerequisite that seamen should be represented by lawyers or other competent advisers at the time they signed releases would result in increased litigation which is definitely not a salutary objective. It would also result in additional expense to both parties.

D. A Release of Unknown Illnesses by a Seaman Should Not Be Denied Validity Because He Is a "Ward of Admiralty".

The Court apparently overlooked the fact that releases of unknown illnesses as well as of known injuries have been sustained by courts in cases other than seamen's.

Farrington v. *Harlem Savings Bank*, 280 N. Y. 1, 4.

> "At the time of the alleged settlement, neither the claim agent nor the plaintiff knew of any injury except the superficial injuries referred to. No doubt the plaintiff had a perfect right to agree to settle for the injuries which were known and for all other injuries which might result, and such an agreement would be binding upon him no matter how serious the result of the injuries might thereafter turn out to be, provided the agreement was fairly and knowingly made."

Moses v. *Carver*, 164 Misc. 204 (affd. 254 App. Div. 402).

The facts in this case are strikingly similar to the case at bar. Here the claim for personal injuries was settled for $200.70, where apparently the injuries were of a minor

nature. It was later discovered that a prior condition of pulmonary tuberculosis had been re-activated. Considering the release which was signed, the court said, page 210:

> "*The instrument is designed to cover not only future developments or effects of the injury, but unknown injuries existing at the time which were not taken into consideration.* The language of the release plainly seeks to avoid the confusion in the cases as to coverage of future developments of a known injury, and the existence or development of unknown injuries * * *. (Italics ours.)
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> "The contention of the plaintiff that the release was executed, both parties believing at the time of its execution that the injuries suffered by the plaintiff were slight, superficial and temporary in character, and that the parties were ignorant of and did not take into consideration the reactivated tuberculosis condition which subsequently developed, is fairly established by the evidence. If the release, however, is a valid instrument; if it is in full force and effect; if by its terms and conditions the plaintiff is bound, then it is our judgment that it includes and covers, by virtue of its all-inclusive language, the conditions which subsequently developed. The instrument purports to release the defendant from all liability for damages, losses or injuries '*whether developed or undeveloped, resulting or to result*' from the accident. The instrument is clearly intentionally designed to accomplish such purpose. If it is a binding and valid obligation; if it does preclude the plaintiff from the maintenance of this action, the fact that there may have been misunderstanding or mistake or a lack of knowledge as to future developments, is insufficient to avoid the effect of its provisions. The release is all-inclusive. We are of the opinion it cannot be set

aside or canceled because of alleged mutual mistake of fact."

See also

Miles v. *N. Y. Central R. R. Co.*, 195 App. Div. 748.

This has long been the law in cases other than personal injuries.

Kirchner v. *New Home Sewing Machine Co.*, 135 N. Y. 182;
Mendelson, etc. v. *Sachs*, 253 App. Div. 270 (aff'd 279 N. Y. 604);
Holland v. *Presley*, 255 App. Div. 667 (aff'd 280 N. Y. 835).

Not only is this the law as established by the overwhelming weight of authority, but the Second Circuit itself in the case of Sitchon v. *American Export Lines, supra, upheld a release practically identical to the one involved in the present action as a bar to claims by a seaman for injuries unknown at the time the release was executed.*

It is a conceded fact that no one knew respondent was suffering either incipiently or otherwise from tuberculosis at the time he signed the release (R. 72-73). This was noted by the Circuit Court (R. 47). Although respondent in his affidavit stated that at the time he signed the release there was no intention on his part to release petitioner for the contraction of pulmonary tuberculosis because he was not advised of this at that time, yet he admitted in the release itself, and did not deny in his affidavit, that he knew he was releasing petitioner for all "injuries, illnesses, rights and claims not mentioned herein or known to me" and that he did this "regardless

of what any one may have told me about my injuries, illnesses or disabilities or about anything else".

Respondent's intent to release unknown injuries, illnesses and claims is clearly set forth in the release. There is no question but that both parties intended to and did settle all claims, both known and unknown. It was a final settlement.

E. The Decisions of the Second Circuit Regarding Releases of Personal Injury Claims by Seamen Are Conflicting.

There are three recent decisions of the Second Circuit involving the validity of a seaman's release in personal injury actions, *Bonici* v. *Standard Oil Co. of New Jersey*, 103 F. (2d) 437, cert. den. 308 U. S. 560, decided April 17, 1939, where the court refused to sustain a seaman's release; *Sitchon* v. *American Export Lines, Inc.*, 113 F. (2d) 830, cert. den. 311 U. S. 705, decided July 19th, 1940, in which a seaman's release was upheld, and the case at bar.

In the *Bonici* case the Circuit Court based its decision on the ground that Bonici relied on an erroneous, though honest, diagnosis made by the owner's doctor. In the *Sitchon* case, where there was an erroneous, though honest, diagnosis by Sitchon's doctor, the court based its decision on the ground that Sitchon had a lawyer and doctor at the time he signed the release. In the present case, where there is no erroneous diagnosis because no one knew respondent was suffering from tuberculosis, the court based its decision on the ground that respondent had no counsel or other competent adviser.

The trend of the Circuit Court's decisions as evidenced by these three recent cases demonstrates that the rule in the Second Circuit now is that it will not hold a seaman's release valid unless the employer shows that there

was no fraud, duress or overreaching, that the seaman fully comprehended the agreement, that it was satisfactory in result so far as concerns the seaman's interest as conceived by the court, *and that the seaman was represented by a lawyer or other competent adviser at the time he signed the release.* In deciding the present case the way it did the Circuit Court refused to sustain the validity of the release although admittedly there was no question of fraud, duress or overreaching and respondent admittedly fully understood the situation and the risk he took. The Court specifically rejected its own rule and test clearly set forth in *Sitchon* v. *American Export Lines, supra,* page 832:

> "The question in any case is whether the seaman, if he is acting alone, has intelligence enough fully to understand the situation and the risk he takes in giving up the right to prosecute his claim or whether, if he is acting under advice, that advice is disinterested and based on a reasonable investigation."

The admitted facts found by the District Court in the present case met that test and the Circuit Court found no facts to the contrary. The result of the Circuit Court's opinion is that full understanding by the seaman of the situation and the risk he takes is not sufficient. The new doctrine, as propounded in the case at bar, is that seamen must be prevented from knowingly making bargains which a court viewing the matter in retrospect may consider unwise. It is now necessary that he receive the advice of a lawyer or other competent adviser. No court, except the court below, has ever gone so far as to hold that a seaman's release for personal injuries becomes unassailable only when the seaman is represented by a lawyer or other competent adviser. Even the presumption that full understanding of the bargain

attaches where such advice is given is purely fictional. The New York Court of Appeals in *Pimpinello* v. *Swift & Co.*, 253 N. Y. 159, recognized this in setting aside a release where the injured man's own lawyer had misrepresented to him the contents of the release.

The liberal rule respecting seamen belongs primarily to admiralty, and yet in the present case, which is at law, the Circuit Court has been more liberal to a seaman than it was recently to a seaman suing in admiralty. In *Johnson* v. *Andrus*, 119 F. (2d) 287, C. C. A., Second Circuit, April 28, 1941, which was an appeal from a decree dismissing a libel filed to recover seaman's wages where a defense of release was interposed, which release had been given for a consideration satisfactory to the libellant, the Circuit Court in a *per curiam* opinion said, page 288:

> "Scrutinize this transaction as one will, if the finding is accepted, there was not a shadow of overreaching in its procurement; to set it aside would in effect deny to seamen the freedom to settle their controversies upon their own terms, which, as we said in *Bonici* v. *Standard Oil Company, supra*, would serve in no sense to protect them, but on the contrary would force them to a suit in every case."

It is certainly difficult to understand how the same court can impose a more liberal rule on the law side in a seaman's personal injury case than it applies on the admiralty side in a seaman's wage case. The rule in the *Johnson* case is precisely the one which the petitioner urges should have been applied in the case at bar.

F. The Decision of the Second Circuit Is in Conflict with the Decisions of Other Circuits.

In refusing to follow the *Sitchon* case on the novel proposition that respondent was not represented by a lawyer or other competent adviser the Circuit Court's decision conflicts with the decisions, not only of its own Circuit, but also with those in other circuits. The general rule in the other circuits heretofore has been that since seamen are "wards of admiralty" the courts will carefully scrutinize their contracts and if after such careful scrutiny they find no evidence of fraud, mistake, duress or the like they will sustain the releases.

Harmon v. *United States, supra*, Circuit Court of Appeals, Fifth Circuit;
The Adonis, supra, Circuit Court of Appeals, Third Circuit.

In the case at bar neither the lower court nor the Circuit Court found fraud, duress, overreaching or mistake. To be consistent with the other Circuits the Second Circuit should have sustained the validity of the release in the present case.

G. Reasons for the Application of the Circuit Court's Doctrine Are Non-Existent in the Case at Bar.

It is apparent that the Circuit Court was decidedly influenced by the venerable expressions of bygone days when the courts had reason to sympathize with seamen.

The maritime law was applied by Mr. Justice Story and Lord Stowell to ignorant seamen's employment contracts not to an intelligent seaman's release of a personal injury claim. In addition conditions have changed. If these eminent jurists were on the bench today they would

be agreeably surprised when informed that seamen are now literate and able to sign articles instead of "making their marks". In *The Juliana, supra,* at page 509, the Court said "* * * many signers to these articles are marksmen".

They would marvel at the passing of the ill-kempt and stuffy "glory holes", the passing of the day when ignorant seamen were pressed into service, the present-day union halls, the seamen's newspapers and pamphlets which advise seamen of their rights, the union delegates on each ship who see that seamen's rights are enforced, the union meeting and forecastle gatherings where seamen congregate to express themselves freely and intelligently, the higher wages and bonuses paid to seamen, the shorter hours enjoyed by them and the easier work they perform due to modern machinery and methods which require intelligent operation.

Certainly no one can seriously contend that seamen are so ignorant today that they have absolutely no comprehension of their acts such as was prevalent in the early part of the 19th century. *The Minerva, supra,* page 358:

> "To those who are acquainted with this Court, it can be no secret how deeply some of these men are affected with surprise and concern, when they find that they have ever executed any engagement drawing after it consequences so disastrous."

It is fair to presume that seamen today are more intelligent than the land laborers in Mr. Justice Story's time yet the craftsmen ashore in that day were not singled out for protection. Compulsory free education has had a salutary effect in raising the standard of seamen's intelligence. Now many of them are high school graduates and some hold college degrees.

There is no need to take away a seaman's self respect by placing him in the same category as an infant. Furthermore one should not be misled by the classical allusions to seamen as "favorites of the court" or "wards of admiralty" who are "thoughtless and ignorant of their rights" and who are "easily overreached", because of their "rashness and improvidence". These characteristics are no longer true of seamen as a class. *Since the reasons have disappeared, the rule should be liberalized in the right direction.* The Circuit Court's observation is pertinent:

> "Since, as Mr. Justice Holmes said, 'it is revolting to have no better reason for a rule than that so it was laid down long ago', and it 'is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past.'" *The Path of the Law*, 10 Harv. L. Rev. (1897) 457, Collected Legal Papers (1920), 167, 187. (R. 58).

Inferiority complexes in seamen should not be fostered by continuous instillation of the idea that they need protection. More can be accomplished to advance seamen further in society by making them realize that they are individuals who are recognized as able, fearless and capable of handling their own affairs. Changed conditions warrant the removal of the stigma of ignorance from seamen and justify a more liberal view of their right to stand on an equal footing with their fellow men, and as a corollary to that right the recognition that they are capable of accepting the responsibilties of their contracts.

Without detracting from the importance that seamen play in national defense it may be said that the part which they play is not a basis for favoring them over shore laborers or the general public. Certainly war con-

ditions are not peculiar to any particular class and it cannot be contended that such unusual conditions should be used as an excuse for refusing to apply permanent and fundamental principles of law.

CONCLUSION.

The Prayer of Petitioner Should Be Granted.

Your petitioner respectfully urges that a final determination by this court of the questions of law involved is of the utmost importance to the shipping industry, to seamen, to the lower Federal courts and to the public generally.

It is believed that the decision of the Circuit Court of Appeals represents an erroneous application and an unfortunate misunderstanding of the general maritime law and that the result of its decision is to give to the general maritime law a construction inconsistent with its own recent decisions and contrary to the decisions of other circuits.

Finally, it is submitted that the precise questions here presented have never been decided by this Court.

Respectfully submitted,

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Counsel for Petitioner.

RELEASE OF ALL RIGHTS

READ CAREFULLY

By signing this you give up EVERY right you have.

I, Merrill W. Hume (Write your own name and age) Age 26 Single (Write here whether you are married or single)

Address 550 West 20th St (Street and number, city or town, and state)

in exchange for ONE HUNDRED FIFTY and 00/100 . . . . . Dollars

($150.00) which I have received, do hereby release (Write the word "release" to show that you know what you are doing)

and forever discharge MOORE-McCORMACK LINES, INC., AMERICAN REPUBLICS LINE and as mortgagee the UNITED STATES MARITIME COMMISSION,

(Here insert Full Names of Persons, Corporations or Partnerships to be released) and their heirs, executors, administrators, successors and assigns, and their several vessels and in particular the MORMACYORK and the owners, agents, charterers, masters, officers, and crews, of said vessels from each and every right or claim which I now have, or may hereafter have on account of injuries and illness suffered by me as follows: Burn 3rd degree of right hand and fingers; burn 1st degree of forehead, face, left forearm June 20,1940.

and, in addition to that, I release them from each and every right (Write the word "release" to show that you know what you are doing) and claim which I now have or may hereafter have because of any matter or thing which happened before the signing of this paper, it being my intention by the signing of this paper to wipe the slate clean as between myself and the parties released, even as respects injuries, illnesses, rights and claims not mentioned herein or not known to me.

READ THE FOLLOWING SIX NUMBERED STATEMENTS CAREFULLY:

(1) I know that this paper is much more than a receipt. IT IS A RELEASE. I AM GIVING UP EVERY RIGHT I HAVE.

(2) In making up my mind to sign this release I am using my own judgment without regard to anything that has been told me by anybody.

(3) I know that in signing this release I am, among other things, now settling in full for all injuries, illnesses and disabilities which I have had already, which I have now, and which I may have in the future, either because of the particular occurrence mentioned above or because of any other occurrence in the past, or because of both, even though I do not know that I have had already, have now or may have in the future such injuries, illnesses and disabilities, and even though they are not mentioned particularly in this release; and I do all this regardless of what anyone may have told me about my injuries, illnesses and disabilities or about anything else.

(4) Regardless of what anyone may have told me, I realize also that my injuries and illnesses and disabilities may have been, may be, or may turn out to be worse than they seem to be now. I am now settling for that too.

(5) I am signing this release because I am getting the money. I have not been promised anything else.

(6) I am satisfied.

THE FOLLOWING IS TO FILLED IN BY THE CLAIMANT HIMSELF IN HIS OWN HANDWRITING.

A. Do you make the above six numbered statements and do you intend that the parties whom you are releasing shall rely on the statements as the truth? A. Yes

B. Have you read this paper from beginning to end? A. Yes

C. Do you know what this paper is that you are signing? A. Yes

D. What is this paper which you are signing? A. release of everything (Write here in your own words)

E. Do you know that signing this paper settles and ends EVERY right or claim you have for DAMAGES as well as for past and future MAINTENANCE, cure, and wages? A. Yes

Therefore, I am signing my name upon the words THIS IS A RELEASE and alongside the seal, which is printed below and which is adopted by me as my own, to show that I mean everything that is said on this paper.

Dated July 23, 1940

Merrill W. Hume (SEAL)

THIS IS A RELEASE

Claimant, if he wishes to sign and seal this paper, should write his name upon the words "THIS IS A RELEASE" immediately above and alongside the printed seal.

Certificate of Witnesses
(Have Three Sign)

We, the undersigned, do hereby certify that the Release on the reverse side of this paper was executed in our presence and that said Claimant acknowledged that he (he or she) fully understood its contents and that it was a release of everything and that he (he or she) executed the same as his (his or her) free act and deed and for the sole consideration therein expressed.

WITNESS our hands and seals on the day, month and year aforesaid.

T. D. Morris (Name) (SEAL) Pier 3 Hoboken N.J. (Address)

H. Andersen (Name) (SEAL) Pier 3 Hoboken N.J. (Address)

Charles A. Gutierrez (Name) (SEAL) Pier 3 Hoboken, N.J. (Address)

Acknowledgment Before Notary Public

COUNTY OF NEW YORK
STATE OF NEW YORK } ss.:

On the 23rd day of July, 19 40, the date of the execution of the Release on the reverse side of this paper, before me personally came said Claimant known to me to be the individual described in and who executed this Release, and acknowledged that he (he or she) fully understood its contents and that it was a release of everything and that he (he or she) duly executed the same as his (his or her) free act and deed and for the sole consideration therein expressed.

(NOTARIAL SEAL REQUIRED)

Certificate of Interpreter

I hereby certify that the Release on the reverse side of this paper was executed in my presence by said Claimant and that I correctly and accurately interpreted the entire Release from the English language into the mother tongue of said Claimant and (he or she) acknowledged that (he or she) fully understood its contents and that it was a release of everything and that (he or she) executed the same as (his or her) free act and deed and for the sole consideration therein expressed.

INTERPRETER

ADDRESS

7/15/39

(21)

No. 689

FILED
OCT 22 1941
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1941.

MOORE-McCORMACK LINES, INC.,
Petitioner,

against

MURIEL W. HUME,
Respondent,

AMERICAN-WEST AFRICAN LINE, INC.,
Defendant.

MEMORANDUM OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI.

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MEMORANDUM OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI.

Statement of the Case.

The Petitioner proceeds upon a false premise, and hence its attitude is misleading.

Hume, a merchant seaman, on June 20, 1940, sustained certain injuries by reason of burns, while a member of the crew of the steamship "Mormacyork".

He had a good recovery, and after examination of his burns by the company's physician, he was offered and accepted $150.00 in full settlement.

He executed a general release on a printed form, and in the blank space provided for a specification of the particular injury settled for, and as to which the minds of

the parties met, the defendant filled in the following typewritten description:

> "Burn 3rd degree of right hand and fingers; burn 1st degree of forehead, face, left forearm, June 20, 1940".

Then the form continued with printed language of the most all-inclusive kind in which it was stated that the seaman also released all injuries, illnesses, rights and claims not mentioned, included those which were unknown.

To this date Hume has not attempted to repudiate that release in so far as it relates to his burns. That was a valid settlement of his claim arising from the burns of June 20, 1940, and he has not sought to escape from that settlement.

But, shortly after executing the release, an examination at the Marine Hospital disclosed that he had pulmonary tuberculosis, and he realized that he had contracted this aboard the same ship on which he was burned, due to unsanitary and improper living quarters.

So, Hume brought suit at common law to recover damages for his tuberculous condition.

The defendant, thereupon, set up the release given for the burn injuries in bar of the common law action, and moved for judgment on the pleadings.

In said suit no mention was made of burns, and no attempt was made by Hume to evade his release for the burns. His complaint was confined to the tuberculosis.

The defendant sought to take advantage of the release, given for the burns, because it contained broad, general language which covered any and all injuries or illnesses, known or unknown.

The district judge held that an adult seaman who could read English, enjoying freedom of thought and action, and toward whom there had been no over-reaching and no coercion, was bound by his release, when he voluntarily executed the same.

We have no quarrel with that law. Compromises and settlements made with seamen, who act without medical opinion or legal advice, should be closely scanned to prevent imposition upon a class notorious for their lack of business acumen or mental alertness, but when fairly made by open negotiation, openly arrived at, the releases should be upheld, where no undue advantage had been taken.

But Hume contended that, as a matter of law, the very specification of the particular injury settled for, by describing the bodily situs of the burns and the exact date when sustained, operated to confine the release to such specified injuries, and none other, and the general, printed language which would enlarge and extend the subject matter of the settlement, must yield to the typewritten specification.

Hume was not satisfied with the decision of the district court, and appealed to the Circuit Court of Appeals. Only two questions were submitted to the appellate court, to wit:

1. When the defendant filled in the blank space in the printed release form by specifying that Hume released every right or claim which I now have, or may hereafter have on account of injuries and illness suffered by me as follows: "Burns 3rd degree of right hand and fingers; burn 1st degree of forehead, face, left forearm, June 20, 1940", and that particularization was followed by printing which enlarged the subject matter of the settlement, does the typewritten specification prevail over the printed generalization?

2. When the minds of the parties did not meet as to unknown illnesses, and the tuberculosis was unknown to both, and there was no causal connection between the burns and the tuberculosis, was there a mutual mistake, so that the release would be inoperative as to the tuberculosis?

As to the first proposition, Hume cited the decision of this court which held that,

"General words in a release are to be limited and restrained to the particular words in the recital".

Texas Railway Co. v. Dashiell, 198 U. S. 521,

and the following federal lower court decisions to the same effect:

Union Pacific v. Artist, 60 Fed. 365 (1);
Board of Education v. McLean, 106 Fed. 819;
Southern Ry. v. Clark, 233 Fed. 900, 904.

Hume also cited numerous New York state court decisions to same effect.

As to the second point, Hume cited the following state court rule:

"The law is well settled that when a release is signed without any intention of the parties to release liability for injuries not known, such release will not be a bar to an action to recover for unknown injuries".

Barry v. Lewis, 259 App. Div. 496; 20 N. Y. Supp. (2d) 88 (3);
Harvey v. Georgia, 148 Misc. 633 (2); 260 N. Y. Supp. 168.

The decision of the Circuit Court of Appeals was very disappointing to both parties for, while it consumed many pages, the opinion was mostly an eloquent historical review of the development of the law as to seamen and their ships. It entirely failed to decide the questions of law raised by the appeal, and the case was sent back without having passed upon the controlling legal points.

But the Petitioner herein misses the point when it attempts to open up the extraneous questions of when a seaman's general release is a binding and valid instrument; whether seamen are wards of the common law as well as of admiralty; must a seaman have a lawyer before

his executed contract is legal, and other irrelevant questions which the steamship companies and their liability underwriters would like this court to decide. Such questions are moot, so far as this particular record is concerned, because nowhere, in pleading or by argument, either in the district court or the circuit court, did Hume attempt to void his release. He recognized the absolute validity of the release in respect of the burns. All he did was to say that the release was not valid as to his tuberculosis, because it was unknown to both parties, and his $150.00 settlement was for the burns only, as specifically mentioned in the release.

Therefore, the questions tendered this court in the petition, arise primarily from a desire to have this court pass upon them, for use in other litigations, for they do not arise from the record in this case.

The legal questions controlling the issue were ignored by the circuit court and are not presented in the petition for certiorari.

The petition presents academic questions predicated upon matters *de hors* the record.

Petition for Certiorari Is Without Merit.

There is no federal law and no federal question involved. The validity of the releases depend on the general law of the state where executed. That different states may have a different rule is a matter of purely local concern to each state, and even if federal Circuit Courts of Appeal, in different circuits, decide law in keeping with the respective state laws, but at variance with each other, nevertheless, in respect of a finding on state law, such conflicting decisions of Circuit Courts will not require the grant of certiorari.

Rublin v. N. Y. Life Ins. Co., 304 U. S. 202; 58 S. Ct. 860.

Whether the specification of particular injuries in a release controls as against the printed comprehensiveness which covered unknown injuries or illnesses, does not arise under the federal constitution, nor under an Act of Congress, and is therefore a matter of state law.

> Erie Railroad v. Tompkins, 304 U. S. 64; 58 S. Ct. 822.

This is not an instance where the Circuit Court of Appeals erroneously followed the federal law when it should have followed the state decisions, or *vice versa*. That court followed neither, for it failed to decide the legal questions presented.

It is not fair to single out certain excerpts from the opinion's historical dissertation, in no wise pertinent to the legal questions determinative of the issues, and because those excerpts may be at variance with other decisions, seek to have this court review such *obiter dicta*.

Under Section III, "The Questions Sought to Be Reviewed", the petition questions, (1) Is it necessary that seamen be represented by lawyers before their releases are valid, when they had complete understanding of the risk they take? (2) Can they, because they are wards of the admiralty, *ipso facto*, void settlement agreements? (3) Are they also wards of the common law?

The petition then declares (bottom p. 8):

> "The precise questions here presented have never been, but should be, settled by this court".

Undoubtedly the questions are interesting, but they do not arise in this case because the seaman, Hume, has not attacked the release for the burns upon the ground that he had no lawyer, nor because he was a ward of the admiralty, or of the common law. He has ratified the release as to the burns, but simply maintained that the shipowner

cannot defeat his claim, arising by reason of unknown tuberculosis, simply because the printed release form extended and enlarged the actual subject matter of the settlement, burns, to include items then non-existent, and hence not within the understanding or contemplation of both parties.

This court has passed upon *that* question long ago, and such law has been generally accepted and applied by the federal judiciary.

> Lumley v. Wabash Railroad, 76 Fed. 66 (3);
> Great Northern v. Reed, 245 Fed. 89 (1);
> Gold Hunter v. Bowden, 252 Fed. 388;
> Church Cooperage v. Pinkney, 163 Fed. 653.

Since the state law controls we say, in passing, that it is in harmony with that of the federal courts.

> Murphy v. City of New York, 190 N. Y. 413-415;
> Kirschner v. New Home Sewing Machine Co., 135 N. Y. 182, 187.

There is no confusion about the applicable law in this case. That some confusion may exist in the adjudications as to the validity of seamen's releases obtained under varying states of fact is no reason why this court should go outside the questions raised by the pleadings, just to settle questions not even collaterally involved.

We repeat, that this seaman Hume has made no contention that he was coerced, over-reached, did not comprehend his act or that he was the victim of fraud or deceit because not represented by counsel. He affirms his act and deed in releasing for his injuries from burns on June 20, 1940.

He simply raised the legal question, is he bound by the general printed language following the express limitation of the release to injury from burns?

The petition, Section V, "Reasons for Granting the Writ", says, "This case involves very important questions of Federal law which have never been, but should be, settled by this court".

We have searched the four succeeding paragraphs, A, B, C, and D, and we fail to perceive any question of federal law. Here is what they contain: (A) The suggested hardship on shipowners; (B) the likelihood that the "ward of admiralty" idea may be applied in law cases; (C) shipowners and seamen should be left free to bargain a settlement, which shall be exempt from judicial supervision, and (D) the difficulty of investigating facts after a seaman has left the ship's employ.

Not one of these situations contain even the germ of a question of federal law.

On the contrary, until there is legislation by Congress, the law of releases by seamen is governed by state laws, and since each case must depend on its own peculiar facts, it is impossible to generalize and say that in the Hume case the Circuit Court did not follow its decisions in the *Sitchon case*, 113 Fed. (2d) 830, and the *Bonici case*, 103 Fed. (2d) 437. As a matter of fact, the circuit court expressly reviewed and differentiated the *Bonici* and *Sitchon* cases (R. 48). Those were both seamen's release cases and this court denied certiorari in each.

CONCLUSION.

While it is regrettable that the Circuit Court did not pass upon the controlling legal questions presented by the appeal, and thus have furnished a guide for the trial judge, nevertheless, having failed to decide the questions leaves nothing to justify a certiorari. This court cannot review a decision which was not rendered.

The historical dissertation which mainly comprised the opinion, may have given utterance to some unsound legal

thoughts, but if they have no application to the issues in the case, they became merely obiter. This court cannot be used to correct such allegedly erroneous statements simply because it would simplify life for steamship claim agents and insurance lawyers, when they do not touch or affect the legal points raised by the pleadings, and which control the case.

The petition for certiorari should be denied.

The Circuit Court having failed to rule upon the questions raised, and having sent the case back to the district court for further consideration, what will the district court do? Of course it will have to be guided by the decision of this court in the Dashiell case, 198 U. S. 521, and the state court case of Barry v. Lewis, 259 App. Div. 496, or risk another reversal.

Notwithstanding all of which, if this court would consider and decide the two legal questions stated on page 3 hereof, we not only would withdraw all opposition but would join Petitioner in asking that the court grant the writ.

Respectfully submitted,

SIMONE N. GAZAN,
Attorney for Respondent.